IN THE COURT OF COMMON PLEAS OF

FAYETTE COUNTY, PENNSYLVANIA

LORI L. WILSON,	CIVIL DIVISION
Plaintiff,	
vs.	NO. 1098 OF 2007, G.D.
MENU FOODS LIMITED, a foreign corporation,	COMPLAINT
Defendant.	

Filed on behalf of:

Lori L. Wilson,

Plaintiff

Counsel of record for this party:

James T. Davis, Esquire
Attorney ID # 23527
DAVIS & DAVIS
107 East Main Street
Post Office Box 1163
Uniontown, PA 15401

(724) 437-2799

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LANCE WINTERHALTER

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IN THE COURT OF COMMON PLEAS OF FAYETTE COUNTY, PENNSYLVANIA
CIVIL DIVISION

LORI L. WILSON,	:	
Plaintiff,	:	
vs.	:	
MENU FOODS LIMITED, a foreign corporation,	:	NO. 1098 OF 2007, G.D.
Defendant.	:	

NOTICE

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

PENNSYLVANIA LAWYER REFERRAL SERVICE
PENNSYLVANIA BAR ASSOCIATION
100 South Street, P. O. Box 186
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TELEPHONE: 1/800-692-7375

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vs.	:	
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Defendant.	:	

COMPLAINT

AND NOW, comes the Plaintiff, Lori L. Wilson, by and through her undersigned attorney, James T. Davis, Esquire, of Davis & Davis, bringing this civil action for damages on behalf of herself and against the above-named Defendant and complains and alleges as follows:

1. Plaintiff, Lori L. Wilson, is an adult individual who resides at 185 Amend Road, Uniontown, Pennsylvania 15401.

2. Defendant, Menu Foods Limited (Menu Foods), is, upon information and belief, a corporation organized under the laws of Canada with a principal place of business at 8 Falconer Drive, Mississuaga/Streetsville, Ontario, Canada L5N, 1BS, that transacts business in the State of Pennsylvania.

3. The Defendant is a producer of, *inter alia,* dog and cat food. Menu Foods produces dog and cat food sold under familiar brand names such as Special Kitty wet cat food, Iams, Eukanuba and Science Diet. Menu Foods distributes its dog and cat food throughout the United States to retailers such as Wal-Mart, Kroger and Safeway.

4. Dog and cat food produced by the Defendant caused an unknown number of dogs and cats to become ill, and many of them to die.

5. To date, Menu Foods has recalled 50 brands of dog food and 40 brands of cat food, including the Special Kitty brand, that have sickened and killed dogs and cats. All recalled food to date is of the "cuts and gravy" wet style.

6. The Plaintiff, Lori L. Wilson, is the owner of an eight-month-old female cat named "Faith."

7. The Plaintiff purchased Special Kitty wet cat food manufactured, produced and offered for sale to the general public by the Defendant from Wal-Mart for Faith to consume.

8. Faith ate the Special Kitty brand wet style cat food for several months before she was beset with her current illness.

9. Faith became extremely ill during the week of March 12 and 13, 2007, by vomiting and laying listless around Plaintiff's home.

10. On March 17, 2007, the Plaintiff took Faith to a veterinarian, who performed blood work on Faith.

11. On March 18, 2007, the veterinarian informed the Plaintiff that Faith had suffered kidney failure, also known as acute renal failure. The veterinarian immediately treated Faith with IVs, vitamins and antibiotics.

12. From March 19, 2007 through the present date, the Plaintiff has administered to Faith at-home IVs, vitamins and antibiotics.

13. On March 24, 2007, the Plaintiff took Faith back to the veterinarian for more IV treatment and blood work.

14. Faith's condition has not dramatically improved at this date and the Plaintiff is due to return faith to the veterinarian for more testing for renal failure at the end of April 2007.

15. As a result of the Defendant's malicious and wanton actions, the Plaintiff has suffered emotional and economic damages.

COUNT I

LORI L. WILSON vs. MENU FOODS LIMITED

BREACH OF CONTRACT

16. The Plaintiff realleges all prior allegations as though fully stated herein.

17. The Plaintiff purchased said Special Kitty wet cat food produced by the Defendant based on the understanding that the food was safe for her pet cat, Faith, to consume.

18. The pet food produced by the Defendant was not safe for pets to consume and caused dogs and cats to become ill, particularly Plaintiff's eight-month-old cat, Faith.

19. The unsafe nature of the pet food constituted a breach of contract.

20. As a result of said breach, the Plaintiff has suffered damages that may fairly and reasonably be considered as arising naturally from the breach or may reasonably be supposed to have been in the contemplation of the parties, at the time they made the contract, as the probable result of the breach of it.

21. The Plaintiff has also incurred, is incurring and in the future will incur veterinarian expenses for the treatment of Faith's injuries sustained as a direct result of the consumption of the Defendant's tainted cat food.

WHEREFORE, the Plaintiff, Lori L. Wilson, demands judgment against the Defendant, Menu Foods Limited, in an amount not in excess of $50,000, plus costs of suit.

THIS CASE IS SUITABLE FOR ARBITRATION.

COUNT II

LORI L. WILSON vs. MENU FOODS LIMITED

UNJUST ENRICHMENT

22. The Plaintiff realleges all prior allegations as though fully stated herein.

23. The Defendant was and continues to be unjustly enriched at the expense of the Plaintiff by accepting payment for the tainted cat food knowing that the cat food was not fit for the consumption by Plaintiff's pet cat, Faith.

24. The Defendant should be required to disgorge this unjust enrichment of the monies paid by the Plaintiff for the purchase of the tainted cat food.

WHEREFORE, The Plaintiff, Lori L. Wilson, demands judgment against the Defendant, Menu Foods Limited, in an amount not in excess of $50,000, plus costs of suit.

THIS CASE IS SUITABLE FOR ARBITRATION.

COUNT III

LORI L. WILSON vs. MENU FOODS LIMITED

UNLAWFUL, DECEPTIVE AND UNFAIR TRADE PRACTICES

25. The Plaintiff realleges all prior allegations as though fully stated herein.

26. The Defendant's sale of tainted pet food constitutes an unlawful, deceptive and unfair business act within the meaning of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa.C.S. §§ 201-1 et seq.

27. The Defendant's sale of hazardous pet food had the capacity to deceive a substantial portion of the public and to affect the public interest.

28. As a result of the Defendant's unfair and/or deceptive acts or practices, the Plaintiff has suffered injuries.

29. The Defendant fraudulently represented that the cat food offered for sale and purchased by the Plaintiff for her pet cat, Faith, was not tainted and fit for Faith's consumption.

30. The Defendant never informed the Plaintiff about the tainted and poisoned cat food.

31. The Defendant and its representatives made representations and omissions about the fitness of the cat food for purchase and consumption of cats, particularly Faith, in order to induce the Plaintiff to purchase same.

32. The Plaintiff did in fact justifiably rely on the Defendant's material representations and omissions and was induced thereby to purchase said cat food.

33. These representations and omissions made by the Defendant constitute unfair methods of competition and unfair or deceptive acts or practices within the meaning of Section 201-2(4)(ii), (vi), (xvii), and (xvii) of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 Pa.C.S. §§ 201-1 et seq.

34. As a direct and proximate result of the Dealership's material representations and omissions, the Plaintiff has sustained damages which include, but is not limited to, past, present and future veterinarian expenses for the treatment of Faith's injuries sustained as a direct result of the consumption of the Defendant's tainted cat food.

WHEREFORE, the Plaintiff, Lori L. Wilson, demands judgment against the Defendant, Menu Foods Limited, and in Plaintiff's favor awarding her treble damages under the Pennsylvania

Unfair Trade Practice and Consumer Protection Law, interest, costs and attorney fees, and such other relief as the Court may determine appropriate. However, the claim for damages is not to exceed $50,000.

THIS CASE IS SUITABLE FOR ARBITRATION.

COUNT III

LORI L. WILSON vs. MENU FOODS LIMITED

BREACH OF WARRANTIES

35. The Plaintiff realleges all prior allegations as though fully stated herein.

36. Cat food and dog food produced by Menu Foods are "goods" within the meaning of the Uniform Commercial Code Article 2.

37. Defendant's conduct as described herein constitutes a breach of an implied or express warranty of affirmation.

38. Defendant's conduct as described herein constitutes a breach of an implied warranty of merchantability.

39. Defendant's conduct as described herein constitutes a breach of an implied warranty of fitness for a particular purpose.

40. As a proximate result of the aforementioned wrongful conduct and breaches, the Plaintiff has suffered damages.

41. The Defendant has had actual or constructive notice of such damages.

WHEREFORE, the Plaintiff, Lori L. Wilson, demands judgment against the Defendant, Menu Foods Limited, in an amount not in excess of $50,000, plus costs of suit.

THIS CASE IS SUITABLE FOR ARBITRATION.

COUNT IV

LORI L. WILSON vs. MENU FOODS LIMITED

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

42. The Plaintiff realleges all prior allegations as though fully stated herein.

43. The Defendant knew, but did not tell the Plaintiff that the cat food was contaminated, polluted and unfit for consumption by Plaintiff's pet cat, Faith.

44. The Plaintiff bought the tainted cat food for Faith and fed Faith the cat food, not suspecting that the Defendant's cat food would cause Faith to fall seriously ill with kidney failure as a result of eating same.

45. The Plaintiff, since feeding her pet cat, Faith, the tainted cat food, has had to endure taking Faith to the veterinarian and helplessly witness Faith receive numerous medical treatments aimed at curing Faith's poisoned system by the Defendant's contaminated cat food.

46. The Defendant acted with the malicious intention of causing Plaintiff's pet cat, Faith, to become ill with kidney failure by consuming its tainted and poisoned cat food.

47. The Defendant intended its actions to cause Plaintiff to suffer extreme emotional distress.

48. As a result of Defendant's conduct, the Plaintiff suffered from mental anguish, nervous shock, embarrassment, shame and humiliation and may be required to undergo extensive medical treatment in order to overcome the emotional distress which she has suffered.

WHEREFORE, the Plaintiff, Lori L. Wilson, demands judgment against the Defendant, Menu Foods Limited, in an amount not in excess of $50,000, for compensatory and punitive damages, plus interest and costs of suit.

THIS CASE IS SUITABLE FOR ARBITRATION.

Respectfully submitted,

DAVIS & DAVIS

James T. Davis, Esquire
Attorney for Plaintiff

Date: April 25, 2007

VERIFICATION

I, LORI L. WILSON, verify that the statements made in this foregoing COMPLAINT are true and correct to the best of my knowledge, information and belief. I understand that statements herein are made subject to the penalties of 18 Pa.C.S.A. § 4904, relating to unsworn falsifications to authorities.

Lori Wilson
Lori L. Wilson

Date: 4-18-07